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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 NEXTDOOR.COM, INC., a Delaware
19 corporation,

20 Plaintiff,

21 v.

22 RAJ ABHYANKER, an individual,

23 Defendant.

Case No.: 3:12-cv-05667-EMC-NMC

**NEXTDOOR.COM'S FIRST
AMENDED WITNESS LIST**

[PER DOCKET 398]

Final Pretrial
Conference: November 25, 2014
Time: 2:30 p.m.
Courtroom: 5, 17th Floor
Judge: Hon. Edward M. Chen
Trial Date: December 8, 2014

Nextdoor.com, Inc. (“Nextdoor.com”) respectfully identifies the following potential trial witnesses pursuant to Fed. R. Civ. P. 26(b), the First Amended Case Management and Pretrial Order [Dkt. 339] and the Court’s Order re Pre-Trial Filings [Dkt 398]. Nextdoor.com’s estimated time for each of the witnesses below is based only on Nextdoor.com’s examination of the witness and does not include any time Defendant Raj Abhyanker (“Abhyanker”) intends to use in examining the witness.

(1) Raj Abhyanker

Testimony will address all facts in dispute in this action, including, without limitation, Abhyanker’s registration and use of the .cm Domain and the site offered at or redirected from the .cm Domain; his reasons for doing so; his bad faith intent in doing so; his intent to profit by that use and its combination with other conduct including USPTO and TTAB proceedings and this action invoking that use; his lack of any rights or standing individually (as opposed to rights of Fatdoor, Inc. and/or Legalforce, Inc.) in the “Nextdoor/Fatdoor” concept; and his lack of a subjective or reasonable objective belief that he could use the domain name, including his creation or destruction of facts and documents in this action to attempt to substantiate what is otherwise a baseless claim to rights in the NEXTDOOR mark. Abhyanker’s testimony will further address the Anticybersquatting statute’s factors for assessing bad faith, including: (1) that between at least 2006 and 2011, Abhyanker had no intellectual property rights in or even relating to the name “nextdoor”; (2) that at no time has Abhyanker had any intellectual property rights in the .cm Domain; (3) that “nextdoor” is not and was not, as the time of Abhyanker’s registration of the .cm Domain, the legal or other commonly used name to identify Abhyanker; (4) that Abhyanker never previously used the .cm Domain, any other domain with .cm as the top-level domain, or any other domain with the word “nextdoor”; (5) his lack of any bona fide non-commercial or fair use of the .cm Domain; (6) his attempt to directly compete with Nextdoor.com; (7) his acknowledgement that Nextdoor.com has prior rights in the NEXTDOOR mark; and (8) that the .cm Domain is confusingly similar with Nextdoor.com’s prior rights.

1 Finally, Abhyanker testimony will include that he has no credible evidence of use or an
2 attempt to use the word “nextdoor” beyond a few days in October 2006. Shortly thereafter he
3 decided to use FATDOOR as the name and trademark for his social network. Never again
4 thereafter, until after Nextdoor.com’s launch, is there any evidence of his use or intent to use the
5 NEXTDOOR mark. It was only once Nextdoor.com launched that Abhyanker decided to register
6 the .cm Domain to directly compete in bad faith with Nextdoor.com.

7 The entire testimony is estimated to last approximately 3.0 hours

8 **(2) Sarah Leary**

9 Nextdoor.com, Inc. co-founder and Vice President of Marketing and Operations will
10 describe Nextdoor.com’s launch of its NEXTDOOR website, Abhyanker’s competition with
11 Nextdoor, including through his www.nextdoor.cm website and fatdoor.com website,
12 Abhyanker’s registration and use of the .cm Domain as a typosquatting site, and Abhyanker’s
13 attempts to block Nextdoor.com’s registration of its NEXTDOOR trademark through his alleged
14 use of the www.nextdoor.cm website. Ms. Leary can also testify about Abhyanker’s continued
15 harassment and bad faith claims and attacks against Nextdoor.com in this litigation and in
16 multiple other forums and proceedings, as relevant to Abhyanker’s claim that he acted in good
17 faith in launching nextdoor.cm against Nextdoor.com.

18 Testimony is estimated to last approximately 15 minutes.

19 **(3) Daniel Hansen**

20 Former attorney for Fatdoor, Inc. and Legalforce, Inc. will testify as to ownership and
21 documentation of rights, if any, in the term or concept Nextdoor as between those entities and
22 Abhyanker. This includes the assignment of rights from Abhyanker to Fatdoor, Inc., and
23 Abhyanker’s representation in 2007 that Abhyanker did not personally hold any intellectual
24 property relevant to Fatdoor, Inc. that had not previously been assigned. Hansen will also testify
25 that in 2012, a week after Nextdoor.com sued Abhyanker for cybersquatting, Abhyanker
26 attempted to acquire rights from Center’d Corporation. Contrary to Abhyanker’s testimony in
27 this matter, and his prior requests of Hansen, Hansen did not advise Abhyanker that he could act
28 as interim CEO of Center’d Corporation. (Ignoring Hansen, Abhyanker then executed an

1 assignment agreement allegedly acting as CEO of Center'd Corporation, which Hansen did not
2 prepare or see, in which he purports to assign all of the company's assets to himself personally for
3 \$1.00.)

4 Testimony is estimated to last approximately 15 minutes.

5 **(4) William H. Harris, Jr.**

6 Chairman of Fatdoor, Inc. (later known as Center'd Corporation) will testify as to
7 Abhyanker's lack of ownership of a Nextdoor concept separate from Fatdoor, Inc., and absence of
8 any grant of permission or transfer of assets, including rights in Nextdoor concept or name, to
9 Abhyanker by Fatdoor, Inc or Center'd Corporation. In particular, Mr. Harris can testify
10 regarding Abhyanker's acknowledgment in 2009, 2010 and 2012 that he did not own Fatdoor,
11 Inc.'s or Center'd Corporation's intellectual property, including the patents Abhyanker assigned
12 to Fatdoor, Inc. in February 2007. Mr. Harris can further testify regarding Abhyanker's
13 competing with Nextdoor.com after its October 26, 2011 launch.

14 Testimony is estimated to last approximately 15 minutes.

15 **(5) David McCain**

16 Proving fabrication when the fabricator resists often requires another to establish the
17 foundation of the fabrication and falsity of the fabricator's claims. As explained in
18 Nextdoor.com's Oppositions to Abhyanker's Motion in Limine Nos. 1 and 2, Mr. McCain, a
19 forensic expert, will testify as to Abhyanker's failure to preserve data and his manufacture of
20 other documents critical to his assertion that he has a good faith basis to believe he has a right to
21 use Nextdoor, including that: (1) Abhyanker fabricated a webpage of eDirectree.com to make it
22 look like he had used the term NEXTDOOR prior to the launch of Nextdoor.com, when in fact he
23 had not, and further destroyed the records of the eDirectree website necessary to determine its
24 true content; (2) Abhyanker altered a Diligence CD to add references to "nextdoor" to support
25 Abhyanker's narrative that he used and believed he had rights in that name; and (3) Abhyanker
26 fabricated a June 4, 2007 Legalforce Assignment Agreement by which Abhyanker claims,
27 contrary to a 2008 Settlement and Assignment Agreement, that Legalforce assigned him the
28 rights he claims underlie his claim of good faith to use "nextdoor" and the .cm Domain.

1 Mr. McCain will also testify that a purported specification relied on by Abhyanker to show his
2 belief in his rights in the “nextdoor” name appears to have been backdated.

3 Testimony is estimated to last approximately 45 minutes.

4 **(6) Shirley Tay**

5 Abhyanker’s accountant and tax preparer is expected to testify that she did not ever
6 receive from Abhyanker, and his tax records (ordered produced by Judge Cousins) were not based
7 on, the fabricated June 4, 2007 Assignment Agreement. Rather Abhyanker provided her, and
8 Abhyanker’s tax filing relied on, a different agreement dated December 23, 2008 that did not
9 contain the same consideration and did not assign all of Legalforce, Inc.’s assets to Abhyanker.
10 Such facts should be available by stipulation, and would not necessarily even require testimony as
11 to the content of the returns themselves. These facts will contradict Abhyanker’s claims that the
12 June 4, 2007 Agreement was valid or existed before he fabricated it in an apparent attempt to use
13 the fabricated agreement to support his purported claim of rights in the “nextdoor” concept and
14 .cm Domain.

15 Testimony is estimated to last approximately 10 minutes.

16 **(7) John Veenstra**

17 Nextdoor.com does not think that any evidence about Abhyanker’s claim to patent
18 ownership should come into the case, both because patents were not disclosed as a basis for
19 Abhyanker’s arguments during discovery, patents cannot establish trademark rights, and because
20 Abhyanker indisputably did *not* own any patent rights between 2008 and 2014. But if any such
21 information were deemed admissible, Mr. Veenstra, the CEO of GeoTag, Inc. will give percipient
22 testimony that Abhyanker does not and did not own the applications (and resulting patents) that
23 include the word “nextdoor.com.” Rather, in 2014, Abhyanker defrauded Veenstra’s company,
24 GeoTag, by assigning from GeoTag to himself, one-half of GeoTag’s interest in the patents that
25 Abhyanker now claims support his good faith defense. In executing this self-interested
26 assignment, Abhyanker represented that he was acting as counsel for GeoTag (signing the
27 assignment agreement in both his attorney and individual capacity). Veenstra will testify that
28 GeoTag never authorized or was even aware of Abhyanker’s actions. Abhyanker’s fraudulent

1 assignment defeats any ownership rights Abhyanker has in his asserted patents and any claim to a
2 good faith belief that these patents conferred on him a right to use the “nextdoor” name or .cm
3 Domain.

4 Testimony is estimated to last approximately 20 minutes.

5 **(8) Bruno Tarabichi**

6 Bruno Tarabichi’s testimony could be avoided by stipulation. But if no stipulation can be
7 obtained, Mr. Tarabichi will provide foundational and percipient testimony as to documents
8 produced, documents purportedly lost or never found, and facts represented in discovery.
9 Mr. Tarabichi’s knowledge includes the 2007 Legalforce Assignment Agreement, which
10 Mr. Abhyanker claims existed before this litigation and has attested that he gave, with all
11 Legalforce’s corporate documents, to his former counsel, who he claims lost it.¹ Mr. Tarabichi,
12 on the record, has already suggested that the 2007 Assignment Agreement was not given to
13 counsel. *Id.* at Abhyanker Depo. Tx. 427:3 – 5. Mr. Tarabichi also is the percipient participant in
14 the creation of the manufactured screenshot of the purported use of “nextdoor” on the
15 eDirectree.com website.² Last, Mr. Tarabichi also has foundational knowledge regarding the
16 custody and imaging of the Toshiba Hard Drive that, if disputed, would need to be presented.

17 Testimony is estimated to last approximately 10 minutes.

18 **(9) Brad Bonnington or other Fenwick & West representative.**

19 This testimony should be avoided by stipulation. But if not, Mr. Bonnington or other
20 appropriate Fenwick personnel will testify to the receipt, source, and authenticity of documents
21 and their metadata. This includes copies of the www.nextdoor.cm website and documents
22 produced by Abhyanker on the Diligence CD and Toshiba Hard Drive.

25 ¹ Dkts. 291; 309; Declaration of Jennifer L. Kelly in Support of Plaintiff Nextdoor.com, Inc.’s
26 Oppositions to Motions in Limine Nos. 1, 2 and 4 (“Kelly. Opp. Decl., ¶ 3, Ex. 2 (Raj Abhyanker
27 Deposition Testimony Transcript at 424:23 – 427:19)). Given this testimony, whether former
28 counsel received that document, as Abhyanker testified, is certainly *not* privileged or has been
waived.

² Again, the facts of this creation have been confirmed in discovery meet and confer discussions
and are not privileged, (*see* Kelly Opp. Decl. ¶ 4, Ex. 3 (Deposition Exhibit 133)).

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Testimony is estimated to last approximately 10 minutes.

Dated: November 10, 2014

FENWICK & WEST LLP

By: /s/ Laurence F. Pulgram
Laurence F. Pulgram

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